



August 20, 2002

Ms. Belinda R. Perkins
Assistant General Counsel
Teacher Retirement System of Texas
1000 Red River Street
Austin, Texas 78701-2698

OR2002-4577

Dear Ms. Perkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167385.

The Teacher Retirement System of Texas ("TRS") received two requests for information regarding a request for proposals for securities lending services, number 0202135Tdp. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.104 of the Government Code. You also notified the third parties whose proprietary interests may be implicated of the request for information and of their right to submit arguments to this office as to why the requested information should not be released.¹ See Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). We have considered the exceptions claimed and reviewed the submitted information.

We first address a procedural issue. Under section 552.2615 of the Government Code, a request is considered to have been withdrawn if the requestor does not respond in writing to an itemized statement sent by a governmental body to the requestor pursuant to section 552.2615 within ten days after the statement is sent. You state that on June 17, 2002,

¹The third parties that were sent notices under section 552.305 are the following: State Street Bank, Deutsche Bank/Bankers Trust Company, JP Morgan Chase Bank, Mellon Trust, and the Northern Trust Company.

you sent the requestor who made requests for information on June 3, 2002 and June 4, 2002 (the "first requestor") an itemized statement of the cost to provide copies of the material responsive to her request, since the charge for the information requested would exceed \$40. You state that the first requestor has not responded to the itemized statement as of July 25, 2002. Consequently, the requests for information received by TRS from the first requestor are withdrawn by operation of law. *See* Gov't Code 552.2615(b). Accordingly, the Public Information Act (the "Act") does not require TRS to produce to the first requestor any information responsive to her requests. *See id.*

With regard to the information requested by the second requestor, you assert that the responsive information is excepted from disclosure under section 552.104 of the Government Code. Section 552.104 states that information is excepted from required public disclosure if release of the information would give advantage to a competitor or bidder. The purpose of this exception is to protect the interests of a governmental body, usually in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 is generally invoked to except information submitted to a governmental body as part of a bid or similar proposal. *See, e.g.,* Open Records Decision No. 463 (1987). In these situations, the exception protects the government's interests in obtaining the most favorable proposal terms possible by denying access to proposals prior to the award of a contract. Generally, section 552.104 does not except bids from public disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision 541 (1990).

In this case, you inform us that the contract at issue has not been awarded and that negotiations are ongoing. We therefore conclude that the submitted information is excepted from disclosure in its entirety at this time under section 552.104. In light of this conclusion, we need not address your other raised exception.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/jh

Ref: ID# 167385

Enc. Submitted documents

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